

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2629

IN THE MATTER OF:

Served November 14, 1984

Application of JONES & WASHINGTON,)
ASS'N., for a Certificate of Public)
Convenience and Necessity --)
Special Operations for Handicapped)
Persons)

Case No. AP-84-34

By application filed August 1, 1984, Jones and Washington, Ass'n., ("J.W.A." or "applicant") a partnership, seeks a certificate of public convenience and necessity to transport mentally retarded and other developmentally disabled persons in special operations, over irregular routes, between points in the District of Columbia, on the one hand, and, on the other, Silver Spring, Md., and points in the District of Columbia and Prince George's County, Md., restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

By Order No. 2590, served August 6, 1984, and incorporated herein by reference, the application was set for public hearing to commence September 13, 1984. Although William C. Dye, trading as W&D Transportation Company, timely filed a protest to the application and attended the hearing, he chose not to participate in the proceedings. Mr. Washington and Mr. Jones testified for the applicant. One public witness testified in support of the application.

Pursuant to temporary authority effective June 11, 1984, J.W.A. transports clients of the Bureau of Community Services, Mental Retardation and Developmental Disabilities Administration of the District of Columbia Department of Human Services (the Bureau) between clients' residences in the District of Columbia and Prince George's County, Md., and day programs in the District of Columbia. As of the date of the public hearing, the Bureau had assigned 95 of its 140 clients to J.W.A. All current passengers are ambulatory, but drivers assist passengers in using transportation as necessary. Routine hours of operation extend from 6:15 a.m. to 9:30 a.m. and from 2:30 p.m. to 5:30 p.m. However, applicant is accessible by phone 24 hours a day, and emergency service is offered between 9:00 a.m. and 2:00 p.m. and after 5:00 p.m.

Applicant conducts its operations in six 11-passenger and 15-passenger vans, one of which is equipped with a portable lift. A seventh van is in the process of being equipped as a utility van

capable of performing emergency repairs on the road. All vehicles have passed inspection in the District of Columbia. Before taking the vehicles out each day, drivers check oil, transmission fluid, lights and windshield wipers. On Saturdays, Mr. Jones performs routine maintenance on each vehicle. Unscheduled repairs are handled daily on an as-needed basis between 10:00 a.m. and 2:00 p.m.

Applicant employs one full-time and four part-time (30 hours per week) drivers. In addition, both Mr. Jones and Mr. Washington drive. If this application is granted, J.W.A. intends to hire at least one additional driver. For the most part, drivers are former taxicab drivers either well known to Mr. Washington or recommended by other drivers. Drivers participate in a five-day training program in which they visit day programs in order to observe and become prepared to deal with any unusual passenger problems which might be encountered.

According to Mr. Washington, applicant has been able to meet the needs of the Bureau because J.W.A. has been using its earnings to expand its capacity slowly. When an additional van is purchased, applicant lets the Bureau know that it is capable of handling an increased workload if the Bureau so requires. Mr. Washington handles all applicant's administrative duties. He meets each passenger's guardian and works with each passenger in his day program in an effort to avert problems. The company is also scheduled to take delivery of a computer with appropriate software to allow storage of vital information for each client including age, birthdate, address, emergency phone number and blood type. Quick retrieval of this information is intended for use in the event of an accident or other emergency.

Subsequent to filing its application, J.W.A. submitted a revised operating statement for July 1984, the first full month of operations under its temporary authority. That statement shows revenues of \$27,145 and expenses of \$11,096, resulting in income, before taxes, of \$16,049. The company's revised balance sheet shows current assets of \$30,199, fixed assets of \$23,100, current liabilities of \$10,400, long-term liabilities of \$22,850, "net worth" of \$4,000 ^{1/} and surplus and undivided profits of \$16,049. Applicant's projected operating statement indicates revenues of \$391,500 for the first 12 months of operation based on an estimated 100 clients a day for 261 days at the proposed rate for ambulatory passengers of \$15. Expenses for the corresponding period were projected at \$165,808. The projected operating statement included \$20,000 for equipment representing the purchase of three vans at \$6,000-7,000 a van.

^{1/} Applicant's partnership agreement requires a contribution from each partner of \$2,000.

Mr. Washington testified that the operations referred to in all financial statements were within the Metropolitan District only, and in vehicles with a manufacturer's designed seating capacity in excess of eight passengers. The witness estimated that between 95 and 105 ambulatory passengers were transported each working day in July 1984, resulting in the revenues stated for that month. Mr. Washington further testified that, in July, he and Mr. Jones did not take 1/12 of the amount required as salaries by their partnership agreement but plan to distribute the surplus within the fiscal year. The projected operating statement for the first 12 months of operations indicates \$71,383 for wages and \$10,000 for workman's compensation. On cross-examination, Mr. Washington conceded that he had made an error and offered a revised figure for drivers' wages including fringe benefits of \$79,600, assuming 5 drivers for 6 hours a day, 21 days a month. This figure excludes \$48,000 in partners' salaries as well as wages for a bookkeeper working approximately 20 hours a week. Mr. Washington was unable to specify what percent of wages is allocated to fringe benefits. He testified that he paid social security tax which he "calculated" using a table. According to Mr. Washington social security tax on \$360 in wages is approximately \$23.

Finally, Mr. Washington testified that, after receiving temporary authority from the Commission, J.W.A. had provided some service for Bureau clients to a day program in Silver Spring, Md. Applicant ceased such operations upon realizing that Silver Spring was neither requested nor authorized in J.W.A.'s temporary authority. If this application is granted, J.W.A. desires to provide transportation to Silver Spring, Md., but to no other location in Montgomery County, Md.

Mr. Jones testified that he has been a professional driver for over twenty years. He has driven tractor trailers and bulldozers as well as taxicabs. Although he has had no formal training as a mechanic, he has had practical training working with many mechanics over the years. Mr. Jones does all routine work on the equipment. However, major work is done by a certified mechanic at a repair shop.

The Bureau's acting administrative officer, Nina Tharpe, testified in support of the application. Ms. Tharpe's office coordinates transportation of the Bureau's clients. At present the Bureau requires daily transportation from residences to day programs for 140 mentally retarded and developmentally disabled persons. On cross-examination and redirect, Ms. Tharpe specified that the clients reside in Prince George's County, Md., and the District of Columbia, and that the day programs are located in Silver Spring, Md., and the District of Columbia.

A letter from Ms. Tharpe to the Commission dated May 11, 1984, was admitted into evidence. The letter had been written in support of

J.W.A.'s application for temporary authority. However, the witness testified that the statements contained in the letter remained true at the time of her testimony in this case. In summary, the letter states that the Bureau requires daily transportation for mentally retarded and developmentally disabled persons to and from their residences for various purposes including participation in day programs. The letter further states that transportation provided by the District of Columbia and private contractors is and has been inadequate. However, J.W.A. has proven able to transport clients with the quality and expertise required to provide services to passengers who sometimes are difficult to serve due to their handicaps.

Ms. Tharpe testified that she has found J.W.A. to be very dependable and responsive to the Bureau's needs including last-minute requests. When the Bureau lost a carrier, J.W.A. was able to take on the displaced clients. A smooth transition was made in one week. There have been no problems with J.W.A. since temporary authority has been issued. In fiscal year 1985 (beginning October 1, 1984), the Bureau is expecting 160 additional clients. Ms. Tharpe believes that J.W.A. could absorb most if not all of these, although it is not the Bureau's intention to become dependent on a single provider.

Title II, Article XII, Section 4(b) of the Compact provides that

. . . the Commission shall issue a certificate
. . . if it finds, after hearing held upon
reasonable notice that the applicant is fit,
willing, and able to perform such transportation
properly and to conform to the provisions of this
Act and the rules, regulations, and requirements
of the Commission thereunder, and that such
transportation is or will be required by the
public convenience and necessity. . . .

Based upon the evidence of record in this case, we find J.W.A. to be capable of providing the proposed service and willing to conform to all applicable requirements imposed by the Compact and the Commission acting pursuant to the Compact.

Applicant has sufficient vehicles and is adequately staffed to provide transportation to its current passenger load. Funds have been allocated to purchase additional equipment and hire drivers as needed. Evidence indicates that the vans are in satisfactory operating condition and are regularly maintained. Although the service generally required is point to point transfers in the early morning and again in late afternoon, applicant is accessible 24 hours a day and offers emergency service as needed. The record further indicates that

applicant has taken steps to assure that the special needs of its passengers are met.

Applicant's financial statement indicates an operating ratio 2/ of 41 percent for the month of July 1984. An operating ratio of 42 percent, before taxes, is projected for the first twelve months of operations. Correcting for Mr. Washington's error as to salaries, the operating ratio becomes 57 percent, before taxes. It is the Commission's experience that an operating ratio of 75 percent is not unusual for a small carrier such as applicant. An operating ratio approaching 40 percent or even one of 57 percent is so far outside the norm as to raise a question regarding applicant's rate of return. Although the financial information submitted indicates that J.W.A. has sufficient assets to conduct the proposed operations, its projected operating ratio in combination with information elicited on cross-examination raises two issues: (1) whether the financial information submitted is credible and (2) assuming the information is credible, whether the proposed rates are just and reasonable under the criteria set forth in the Compact. 3/ J.W.A. is a recently formed partnership. At the time of the hearing, applicant had been offering service for less than four months and its business was at an early stage of development. Mr. Washington was unable to supply certain information requested on cross-examination either because he did not have the information or because the course of action taken would be determined by the course of future events. For these reasons, we will not suspend applicant's tariff at this time but will retain jurisdiction over the matter until applicant's first annual report has been filed and evaluated. At that time, we will review J.W.A.'s financial situation and, if necessary, institute an investigation into the justness and reasonableness of applicant's rates and charges.

Finally, we find that the public convenience and necessity require the transportation proposed by applicant. Applicant's public witness testified that the Bureau requires daily transportation of the type for which J.W.A. seeks authority. According to the witness, current transportation, including that provided by the District of Columbia and private contractors, is inadequate. In addition, the Bureau anticipates that its need will increase in the near future. Ms. Tharpe testified that J.W.A. had shown itself to be dependable, responsive to the Bureau's needs and capable of transporting clients whose handicaps may create special difficulties. The record leaves no doubt that if J.W.A. is granted a certificate of public convenience and necessity, the Bureau will continue to use applicant to transport

2/ The operating ratio represents the relationship of operating expenses to operating revenues. Interest is excluded as a cost of capital.

3/ Compact, Title II, Article XII, §6.

the 95 clients being transported under temporary authority as well as some of the additional clients which the Bureau anticipates. In light of this testimony and the fact that no protests were pursued, we must infer that no appropriately certificated carrier would be adversely affected by granting the instant application.

To conform to the evidence in this case, the grant of authority below will permit J.W.A. to transport all clients of the Bureau. Rephrasing the grant of authority also eliminates a description of the passengers which is administratively undersirable while, at the same time, preserving program flexibility for the District of Columbia.

THEREFORE, IT IS ORDERED:

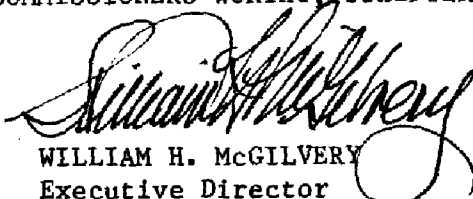
1. That Jones and Washington, Ass'n., is hereby granted a certificate of public convenience and necessity to transport clients of the Bureau of Community Services, Mental Retardation and Developmental Disabilities Administration of the District of Columbia Department of Human Services, in special operations, over irregular routes, between points in the District of Columbia, on the one hand, and, on the other, Silver Spring, Md., and points in the District of Columbia and Prince George's County, Md., restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver.

2. That Jones and Washington, Ass'n., is hereby directed to submit the following: (1) an equipment list detailing equipment held on or acquired subsequent to the date of service of this Order, (2) two copies of its WMATC Tariff No. 1, and (3) two copies of an affidavit certifying compliance with Commission Regulation No. 68 governing identification of vehicles for which purpose WMATC Certificate No. 116 is hereby assigned.

3. That unless Jones and Washington, Ass'n., complies with the requirements of the preceding paragraph within 15 days, or such additional time as the Commission may direct, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That jurisdiction is specifically retained with regard to the matter of the reasonableness of applicant's rates, based upon evaluation of the results of operations to be indicated by applicant's 1984 annual report.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director